



A Report
to the
Board of
Supervisors

*Maricopa County
Internal Audit
Department*

Ross L. Tate
County Auditor

Air Quality Department

*Documentation and Timeliness of
Enforcement Actions Need
Improvement*

May ■ 2008

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The mission of Maricopa County is to provide regional leadership and fiscally responsible, necessary public services so that residents can enjoy living in a healthy and safe community.

The mission of the Internal Audit Department is to provide objective, accurate, and meaningful information about County operations so the Board of Supervisors can make informed decisions to better serve County citizens.

The County Auditor reports directly to the Maricopa County Board of Supervisors, with an advisory reporting relationship to the Citizen's Audit Advisory Committee.

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May 30, 2008

Andrew Kunasek, Chairman, Board of Supervisors
Fulton Brock, Supervisor, District I
Don Stapley, Supervisor, District II
Max W. Wilson, Supervisor, District IV
Mary Rose Wilcox, Supervisor, District V

We have completed our review of the Air Quality Department. This audit was performed in accordance with the FY07-08 annual audit plan approved by the Board of Supervisors. The specific areas reviewed were selected through a formal risk-assessment process. This report focused on the Enforcement Division; specifically, air quality violation penalties.

Highlights of this report include the following:

- Penalty calculations and penalty reductions are not adequately documented
- Reductions in some penalties appear questionable
- Timeliness for resolving cases could be improved

Within this report, you will find an executive summary, specific information on the areas reviewed, and the Air Quality Department's response to our recommendations. We have reviewed this information with the Deputy Director and appreciate the excellent cooperation provided by management and staff. If you have any questions, or wish to discuss the information presented in this report, please contact Richard Chard at 506-7539.

Sincerely,

A handwritten signature in dark ink that reads "Ross L. Tate".

Ross L. Tate
County Auditor

Executive Summary

Enforcement Documentation (Page 5)

The Air Quality Department (AQD) does not fully document its violation penalty actions. This makes it unclear how penalties were calculated and why penalties were reduced. AQD should more thoroughly document case files and penalty calculations.

Timeliness (Page 9)

AQD Enforcement Division could improve timeliness for resolving cases. Decreasing the time it takes to negotiate penalties would also likely promote corrective change at permit sites. The Enforcement Division should consider using incentives to improve timeliness.

With respect to high priority violations, delays in enforcement action could delay corrective action and result in the Environmental Protection Agency (EPA) taking over a case, although we are unaware of any incident where they have done so. AQD should ensure adequate resources are assigned to high priority violations.

Introduction

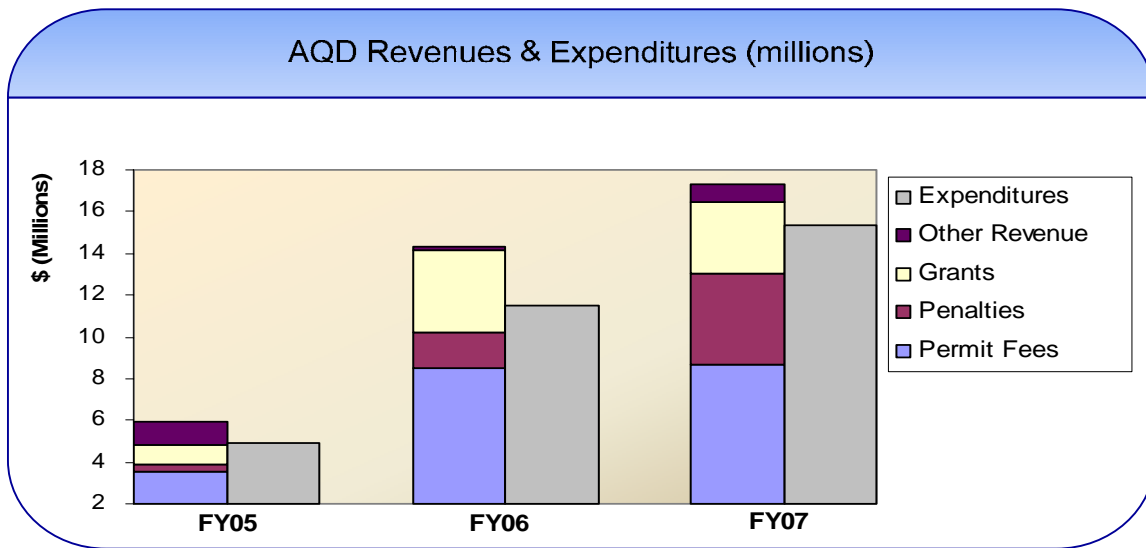
The Maricopa County Air Quality Department is a regulatory agency whose goal is to ensure federal clean air standards are achieved and maintained for the residents and visitors of Maricopa County. The department was formed as an independent department in November 2004 when it split from the Environmental Services Department. Department size has more than doubled since that time to help the department comply with EPA requirements. Those requirements include enforcing the Clean Air Act and following commitments set forth in the State Implementation Plan (SIP). The SIP was created as a result of the Phoenix Metro area's failure to meet certain air quality standards pertaining to particulate matter (small particles of dust and other pollutants).

Vision and Mission

AQD's vision is to achieve the highest air quality standards in Maricopa County as it evolves with the County's escalating growth. Its mission is to protect air quality for the people of Maricopa County so they can live and breathe in a clean air environment.

Operating Budget, Revenues, and Expenditures

AQD receives the majority of its funding through permit and license fees. It has also been receiving an increasing amount of penalties, which are negotiated by the Enforcement Division. The remainder of revenues comes from grants, interest on fund balances, and general fund support. The growth in the department's revenues and expenditures since its inception can be seen in the following chart.



Revenue from penalties has grown dramatically since FY05.

Source: Auditor Analysis of Advantage Financial System

Enforcement

Air quality permits are needed for any business or individual that builds, installs, and/or operates equipment that emits or controls the emissions of certain contaminants. These individuals or businesses must apply to AQD and pay a permit fee and are subject to inspection.

The SIP requires air quality inspectors to write notices of violation (NOVs) for any violations they find while doing inspections. Violations can be categorized by source type:

Category	Description
Asbestos	Related to regulation of renovation and demolition activities containing regulated asbestos-containing material
Dust	Dust from unstable or disturbed dirt surfaces such as construction areas, vacant lots, and dirt roads
General	Emissions from the following sources: dry cleaning, fuel burning, gas stations, graphic arts, surface coating operations, and vehicle and mobile equipment finishing
Title V	Major sources of emissions as defined by federal law. This category is based on a federal program designed to standardize air quality permits for major sources of emissions across the country. These sources emit significant amounts of air pollutants.
Non Title V	Emissions sources such as gasoline plants, heating units and internal combustion engines, and surface coating operations, that are below the Title V emission thresholds and that are not considered exempt or insignificant

Source: AQD website

Once a NOV is written and finalized, it is sent to the Enforcement Division. Enforcement is responsible for determining the penalty amount and negotiating a settlement with the violator. The Division has developed comprehensive policies and procedures to help enforcement officers determine penalty amounts. A worksheet that takes into account many factors (e.g., the size of the company, past history, and the health threat of the violation) is used to calculate penalties. If there are multiple NOVs for an offender, the enforcement officer will address all violations and attempt to settle all of the NOVs together.

After the enforcement officer has calculated the penalty, he or she will mail a letter to the violator. The violator can either pay or negotiate with AQD to reduce the penalty. If the company can prove it was not responsible for the NOV, no penalty will be assessed.

When a penalty has been agreed upon, the company's representative must sign an Order of Abatement by Consent (OAC). This is a legal document, between AQD and the violator, in which the violator agrees to pay the penalty amount and AQD agrees that no further action will be taken on the NOV if the violator pays the full amount. If the parties cannot reach an agreement, the case can be taken to court or to the EPA.

Scope and Methodology

Audit Objectives

The objectives of this audit were to:

- Determine if differences between initial penalties for violations and negotiated penalties were warranted and supported by adequate documentation
- Determine if penalty amounts were fair and equitable among similar permit holders, similar notices of violations, and enforcement officers
- Determine if penalties were imposed quickly enough to elicit change at permitted sites

Audit Timeframe

To achieve these objectives we selected notices of violation that Enforcement resolved or addressed. The audit period covered fiscal years 2005, 2006, and 2007.

Audit Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Department Reported Accomplishments

Air Quality has provided the Internal Audit Department with the following information for inclusion in this report.

- US EPA, Region IX, awarded the enforcement division the 2007 Environmental Award for Outstanding Achievement.
- Enforcement has had a positive effect on the percentage of emissions inventory NOVs since 2004, the first year that enforcement made the decision to assign a high priority to these referrals.

year	Total inventories sent	Total NOVs sent	% of Total
2004	842	107	13%
2005	1090	164	15%
2006	986	88	9%
2007	541	32	6%

- Penalties negotiated for calendar year 2006 totaled approximately \$3.7M. This total was greater than the previous six years combined in enforcement settlement monies.
- Enforcement settlements totaled approximately \$5.3M in calendar year 2007.
- The enforcement division has developed penalty calculation consistency guidelines that have been placed on the I-Drive.
- Enforcement has bi-weekly meetings to discuss consistency in penalties.

Issue 1 Enforcement Documentation

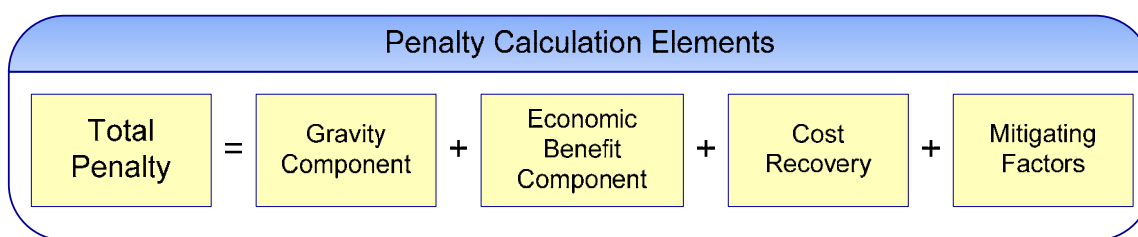
Summary

AQD does not fully document its violation penalty actions. This makes it unclear how penalties were calculated and why penalties were reduced. AQD should more thoroughly document case files and penalty calculations.

Criteria

AQD has developed policies and procedures to provide consistent and reasonable processes for documenting violations, notifying alleged violators, and initiating enforcement actions to ensure that violations are addressed in a timely and appropriate manner. The policy includes the following:

- Penalty calculations should be prepared before a settlement is reached
- Enforcement officers are to complete an Air Quality Penalty Calculation Worksheet (penalty worksheet) for each violation and provide a brief description next to each factor indicating how each factor of the penalty was developed
- Penalty calculations are to be updated during negotiations for any continuing violations
- Any penalty relief resulting from the submittal of new information by a violator is to follow the guidelines in the adjustment factors section of the policy
- Penalties are imposed to take away the economic benefit and enticement to operate in violation of requirements by recouping any money a violator saved by operating out of compliance. Penalty calculations consist of the following elements:



Source: AQD Violation Penalty Policy

AQD Policy is consistent where possible with the EPA Clean Air Act Civil Penalty Policy which lists the following as valid penalty mitigation factors:

- Risk of litigation
- Ability of the violator to pay

Condition

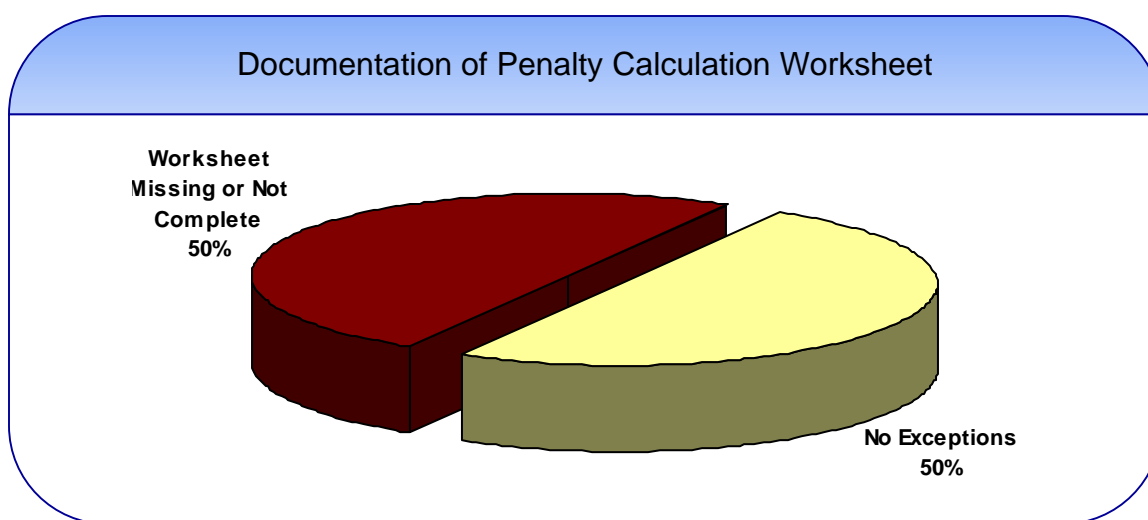
Lack of documentation in AQD case files makes it very difficult to determine if AQD enforces air quality violations of similar companies consistently. In addition, the lack of case documentation makes it unclear how penalties are calculated and why they are reduced.

Inadequate Enforcement Documentation Hinders Comparison of Similar Companies

Based upon our examination of 188 cases settled during FY05-FY07, we observed that penalty calculation worksheets were not consistently filled out, making it very difficult to determine why one company was fined one amount and another similar company was fined a different amount.

Generally, page one of the calculation worksheets were consistently calculated and documented. However, page two, which includes adjustments to the calculated penalty amount, was not consistently completed.

Of the 188 case files reviewed to determine if similar violations were consistent, half of our sample had missing or incomplete worksheets and explanations.



Half of our sample had missing or incomplete worksheets and explanations.

Source: Auditor Case File Review

Without adequate documentation as to why there were differences in penalty amounts we cannot determine if similar violations were treated consistently or if penalty reductions were appropriate.

AQD Does Not Explain the Reasons for Negotiated Penalty Reductions

In another test conducted to determine if negotiated penalty reductions were reasonable, we found that some penalty reductions appeared questionable or unnecessary and that documentation was not sufficient in all cases to determine if the reductions were justifiable. We reviewed 35 case files negotiated by AQD and found the following documentation issues:

- 49% (17) were missing descriptions next to each factor on penalty worksheets
- 66% (23) were missing penalty worksheets for recalculation of penalties after negotiations
- 60% (21) did not have any notes regarding the negotiated penalty amount
- 40% (14) did not contain a copy of the initial letter sent to the violator

- 26% (9) of the penalty worksheets had multiple calculations on them with no notes or dates to highlight what calculations are for
- 26% (9) did not have signatures and dates on penalty worksheets

AQD Reduced Penalties by More Than 15% for One-Third of Tested Cases

If a violator does not agree to an initial penalty amount, they have the option of negotiating with AQD. This process often results in reduced penalties. The following table shows how much the penalty amounts were reduced for our sample of 35 cases.

Penalty Reduction Amount	Number of Cases
None	12
15% "Auto Mail Out Reduction"	12
Greater than 15%	11

Source: Auditor Case File Review

All reduced penalties we reviewed contained recalculations of the penalty; however, it was not always clear how the amounts were recalculated or the reasons amounts were reduced. Several of the worksheets reviewed had numbers crossed out and replaced with new numbers with no explanation or date as to why the original amount was reduced. This made it unclear whether the new number was the result of negotiations or other factors. We noted five cases which appear to have questionable reductions.

For a period, AQD offered violators a 15% reduction in penalty amounts settled by mail as an "incentive to resolve case without further negotiation." This was intended to expedite cases and reduce backlogs by eliminating the negotiating time. However, this did not help reduce the backlog as companies wanted to negotiate a lower penalty *and* receive the 15% discount.

Of 12 cases that received a 15% auto reduction, three cases were given various reductions based on new information, and then the 15% was taken off as a "standard reduction." It appeared that these cases involved negotiations, yet were given the "auto discount" (for not negotiating). Based on follow-up interviews with the enforcement officers, these cases had penalty amounts reduced because of litigation risk, however there was no documentation of this in the case files.

None of the 11 case files with penalty reductions exceeding 15% had documentation to justify why the reductions were made. Interviews with the enforcement officers that worked on each of the cases provided adequate explanations for the reductions in nine of the cases. The reasons given for the two other reductions are:

- One company said they pre-watered a disturbed area during the day (part of the NOV cited the company for not watering), but did not provide any proof of the pre-watering activity
- The initial penalty was very large, and the company did not agree to the initial amount; therefore, the penalty was reduced.

The total dollar effect of these reductions is shown in the table:

Reason for Reduction	# of Cases	Initial Fine	Amount Paid	Reduction
Fine reduced for new information, still given 15% "auto discount"	3	56,825	48,301	8,524
Fine reduced without documentation from violator	2	73,540	59,210	14,330
	5	\$ 130,365	\$ 107,511	\$ 22,854

Source: Auditor Case File Review

Effect

When case files do not contain adequate documentation it is unclear why penalties have been reduced. In order to promote compliance with the Clean Air Act and County rules and regulations, penalty amounts should be fair and equitable.

When penalty calculation worksheets are not filled out completely, enforcement officers may not have all relevant information needed to propose an effective penalty. This lack of information could adversely affect a settlement conference if the original enforcement officer is not available. Without a formal review system in place there is no assurance that all components of a penalty have been given fair consideration.

Cause

The AQD policy does not specify the information that should be contained in case files.

While AQD does have a penalty policy, enforcement officers were not consistently following the documentation requirements when calculating and reducing penalties. This could be the result of a lack of supervisory review of case files and settlement negotiations. We found no evidence of supervisory review of settlements in the case files and the Enforcement Manager stated that he does not review the case files prior to settlement. By way of comparison, three similar counties reported that a supervisor reviews enforcement officers' work and settlement amounts, and a fourth county reports it has a peer review system in place.

Recommendations

Air Quality Enforcement should:

- A. Develop a policy that outlines what information is required to be in every case file
- B. Adequately document penalty calculation worksheets to show how penalties were determined, and of how adjustments and reductions were determined
- C. Develop a review system so that another enforcement officer or supervisor reviews every case file once a settlement amount has been determined to ensure all documentation is complete and settlement amount is appropriate
- D. Require an additional senior enforcement officer or supervisor to attend settlement negotiations and approve any penalty reductions agreed upon during negotiations

Issue 2 Timeliness

Summary

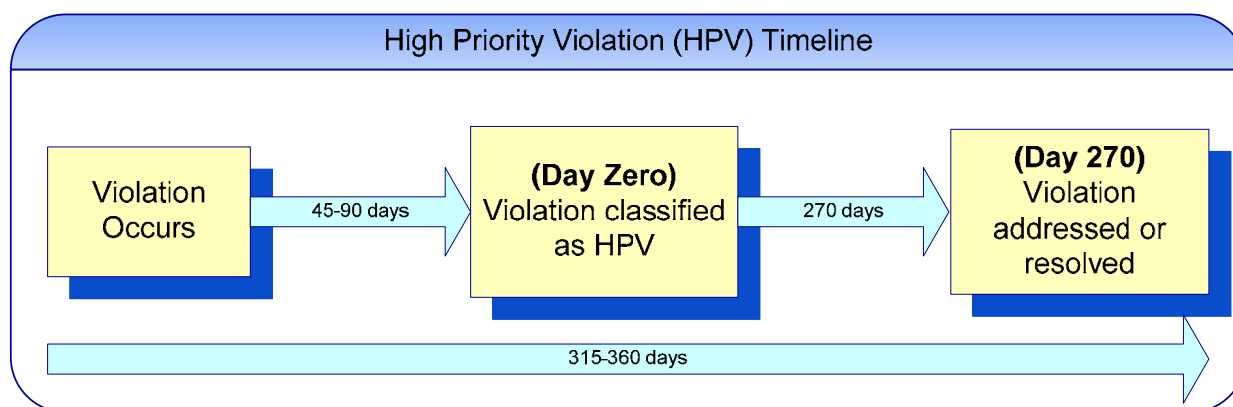
AQD Enforcement Division could improve timeliness for resolving cases. Decreasing the time it takes to negotiate penalties would also likely promote corrective change at permit sites. The Enforcement Division should consider using incentives to improve timeliness. With respect to high priority violations (HPVs), delays in enforcement action could delay corrective action and result in the Environmental Protection Agency (EPA) taking over a case, although we are unaware of any incident where they have done so. AQD should ensure adequate resources are assigned to high priority violations. AQD should ensure adequate resources are assigned to high priority violations.

Criteria

There are no federal or local criteria for timeliness of settlements other than HPVs. AQD Policy, states that “enforcement action is initiated to correct violations in a timely manner” but does not give specific timeframes. Because of this, we compared Maricopa County with Clark County (Nevada) Department of Air Quality and Environmental Management and the San Joaquin Valley (California) Air Pollution Control District benchmarks. While we could not verify the accuracy of these numbers, they provide a valuable reference for the performance of AQD.

For HPVs, we found that AQD must follow the EPA Timely and Appropriate Enforcement Response to High Priority Violation policy summarized below:

- All HPVs should be resolved or addressed by Day 270 after the violation is classified as HPV. Day 270 occurs between 315 and 360 days after the date of violation, depending on whether additional information was needed



EPA policy requires that violations be addressed or resolved by Day 270. The clock starts when AQD classifies the case as HPV.

Source: EPA Timely and Appropriate Enforcement Response to HPV Policy

- The policy says “addressed” means having an administrative or judicial order in place for compliance purposes or the case being subject to referral for an enforcement hearing or judicial action
- The policy defines “resolved” as the source having been returned to compliance

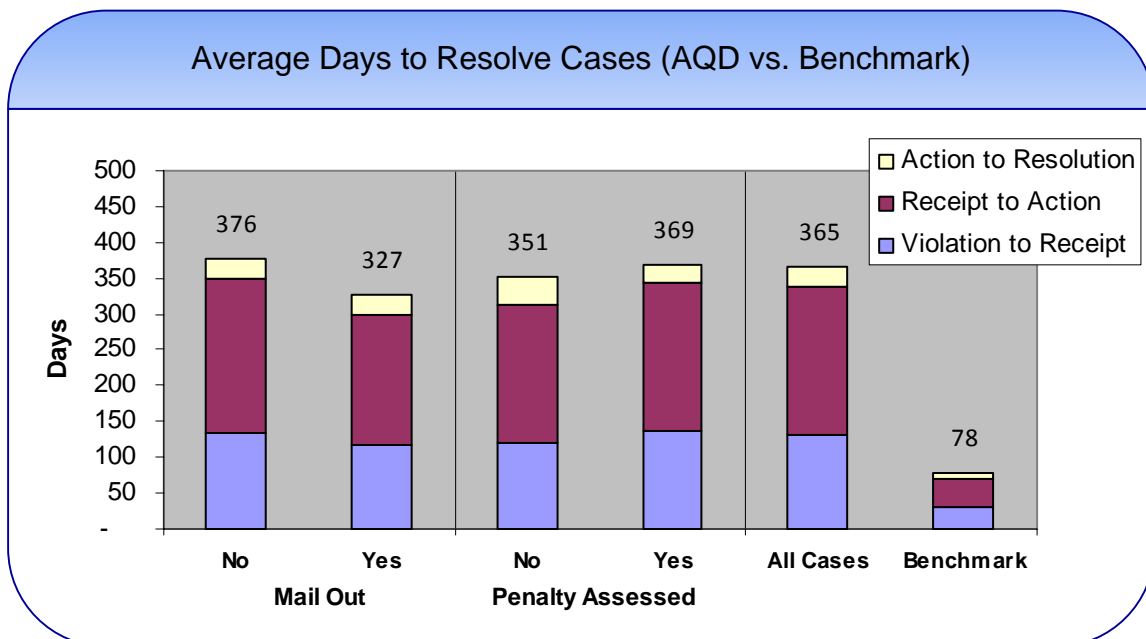
- On a monthly basis, the State/Local agency (AQD) and EPA should hold a conference call to discuss the status of current cases and determine the best method of returning the source to compliance
- On or before Day 150, if a case has not been Resolved/Addressed, the State/Local agency (AQD) and EPA should have a focused case specific consultation concerning overall case strategy

AQD did not track the HPV “addressed date.” However the database definitions that AQD provided define the “resolution date” as the date the OAC is signed by the Control Officer (Director), referred to the County Attorney or settled through a court order. We used this resolution date to determine if the HPV case was “addressed/resolved” according to EPA policy.

Condition—All Violations

We reviewed all 2,116 violations that were resolved during FY05-FY07 to determine the average number of days each stage of the enforcement process took. Overall, we found it took an average of 365 days for an NOV to be resolved compared to 78 days for the benchmark agencies.

We analyzed the average total time to resolve and receive payment on all of these cases based on whether the case was resolved through the mail (instead of negotiating in person), whether a payment plan was allowed, and whether a penalty was assessed. Settling through mail generally reduces the amount of time. A significant portion of the total time to resolve consists of time spent at Compliance (Violation to Receipt) and waiting in the backlog at Enforcement until it is assigned to an enforcement officer (Receipt to Action). The respondents to our benchmark survey each reported significantly less time to accomplish the same processes. The following chart shows total time to resolve by each phase. The “Benchmark” column includes the responses from Clark County and San Joaquin Valley.



AQD takes over four times as long to resolve enforcement cases as benchmark agencies.

Source: Enforcement Database

Based on the interviews with Clark County and AQD management, AQD's enforcement process is very similar to that of Clark County. Because of this, we further analyzed Clark County's enforcement process to highlight potential efficiencies that Clark County utilizes to reduce the enforcement timeline. The two main differences are that in Clark County:

- All violators are initially offered a discount to not negotiate
- If a violator wishes to negotiate, the violator must go before the hearing officer, who only hears cases once a month

The Compliance Manager at Clark County said that they have seen the number of violators wishing to negotiate drop from approximately 40-50% percent to approximately 10-20% after the introduction of the discount. He said he determined the appropriate discount percentage by looking at how much time and money (wages, paper costs, etc.) were spent on each negotiated case. He figured out that the discount would result in the same net revenue to his department. Offering the discount has also reduced the time it takes to settle cases. He said this has helped reduce the time it takes to settle cases, which in turn reduced the number of backlogged cases.

Cause

AQD staff indicated that the detailed departmental report which must accompany each NOV may delay the process if the initial draft is not sufficient or accurate. Our analysis showed that this process took an average of 132 days in Maricopa County. Benchmark counties reported an average of 30 days for this same process. In addition, one county reported that their inspectors are not required to write detailed reports; they simply package all of the inspection documents together.

Significant delays occur when a violator wants to negotiate. This includes the violator sending additional documents, and Enforcement updating the Order of Abatement by Consent and sending it out again. Enforcement does not have a negotiation policy that requires violators to submit additional information in a timely manner.

According to staff, AQD Enforcement offered a 15% mail out discount to reduce the backlog of cases at one time, however, the Division never evaluated how successful the discount program was. In addition, staff indicated that an increase in the number of NOV's has contributed to the backlog of cases.

Effect

The average case takes 365 days to settle, or more than four times longer than the benchmark agencies. AQD's mission is to protect the air quality in Maricopa County. When enforcement action is not timely corrective action may be delayed and negatively impact air quality.

Condition—High Priority Violations

Per EPA guidance, a violation should be address or resolved between 315 to 360 days after the violation depending on when the violation was determined to be an HPV and whether additional documentation was required (referred to as Day 270 in the HPV Policy). We reviewed all HPVs that were settled during FY05-FY07 and appeared to go more than 315 days between the violation date and the settlement date (date OAC signed). This consisted of ten cases. We reviewed the files for each of those cases to determine the number of days between the date the violation was discovered and the resolution date (settlement date). The number of cases in each category, the average number of days spent at Enforcement, and to resolve are shown in the table below:

Total Days To Resolve	Count	Average # of Days from Discovery to Resolution	Average # of Days at Enforcement
≤ 315 Days	1	309	306
316-360 Days	3	324	245
> 360 Days	6	578	403

Source: Auditor Case File Review

Of the ten cases reviewed, we determined that eight were not resolved within the required timeframe. Although all of the cases reviewed went over 240 days (HPV Day 150) and therefore required EPA contact, none of the cases reviewed had any evidence of any contact with the EPA in the case file. The EPA liaison for the department provided emails between the EPA and AQD discussing eight of the ten cases. However, these emails are not sufficient for contact requirements outlined in the EPA policy.

Effect

When AQD does not resolve or address high priority violations within the required time frames, corrective action may be delayed and air quality may be negatively impacted. Although we are unaware of any incident where the EPA has taken over a case, they have the authority to do so. If this happens, AQD would lose the penalties. The eight penalties mentioned above average 17 times more than all other penalties imposed during the period. Average penalty amounts for the period of FY05-FY07 are shown in the table below:

Case Type	# of Cases	Total Penalties	Average Penalty
HPVs (not in compliance)	8	\$592,504	\$74,063
HPVs (in compliance)	15	\$519,434	\$34,629
All Other Penalties (non-HPV)	1,521	\$6,091,737	\$ 4,005

Source: Auditor Case File Review

Cause

Enforcement tries to settle all HPVs from a single company together. This creates delays if a company has multiple HPVs.

It appears that for three of the eight cases, time spent at Compliance contributed significantly to the delays as illustrated below. Days in red show where the majority of the time was spent.

Business/Defendant Name	Days at Compliance	Days at Enforcement	Total Days to Resolve
Imsamet (Violation #1)	54	814	868
APS West Phoenix Power Plant (Violation #2)	37	638	675
City of Chandler Landfill	29	333	362
SFPP (Kinder Morgan)	11	318	329
New Harquahala Generating	102	281	383
Panda Gila River	384	192	576
APS West Phoenix Power Plant (Violation #1)	442	162	604
Rexam Beverage Can	165	155	320

Delayed HPV Cases: Time at Compliance Compared to Time Spent at Enforcement

Source: Auditor Case File Review

EPA contacts were delegated to one person in Air Quality, who may not be aware of all contact requirements.

Enforcement does not have a negotiation policy that requires violators to submit additional information in a timely manner.

Recommendations

Air Quality Enforcement should:

- A. Evaluate the current case assignment process to ensure that appropriate and adequate resources are assigned to high priority violations as required by the EPA
- B. Conduct monthly and Day 150 conference calls with the EPA, or seek waiver to policy if not beneficial
- C. Update penalty policy to require violators to submit additional information in a timely manner
- D. Review results of previous discount program and consider reinstating it

Department Response

AUDIT RESPONSE – ENFORCEMENT ISSUES
AIR QUALITY DEPARTMENT
MAY 28, 2008

Issue: Documentation of violation penalty actions

AQD does not fully document its violation penalty actions. This may have resulted in lost revenue and inconsistent treatment of similar operations. AQD should more thoroughly document case files and penalty calculations.

Response: Concur

The Department will take steps to ensure that documentation will be complete and reflects the reasoning and calculation, if necessary, for the negotiated final reduction of penalty. The Department understands concerns regarding inconsistent treatment of violators or disparate fine levies based on previous documentation inadequacies, but disputes any actual inconsistencies. The Department takes measures through detailed internal guidance to ensure consistency of settlements. These documents have been provided to Internal Audit for review prior to this audit finding and will be available for review again as an attachment to this response.

Documentation of negotiations will highlight the reason(s) for a reduction of penalty that may also include the possibility that the settled upon fine levy is sufficient to compel future compliance. Based on that, and the one-time nature of fine revenue, speculation on future or lost revenue for funding of on-going operating expenditures is incongruent with the Departmental Mission of violator compliance leading to protecting and improving air quality.

Recommendation A: Develop a policy that outlines what information is required to be in every case file.

Response: Concur.

Internal Guidance Policy posted on the I-Drive (File Order) on 4/25/08.

Target Completion Date: 04/25/08

Benefits/Costs:

Recommendation B: Adequately document penalty calculation worksheets to show how penalties were determined, and of adjustments and reductions were determined.

Response: Concur.

All enforcement officers have been instructed to provide full documentation of penalty calculations and penalty reductions in file.

Target Completion Date: 06/06/08

Benefits/Costs:

Recommendation C: Develop a review system so that another enforcement officer or supervisor review every case file once a settlement amount has been determined to ensure all documentation is complete and settlement amount is appropriate.

Response: Concur.

In March of 2008, the Department instituted a settlement spot review process that is conducted monthly on all enforcement officers. This process was instituted after this audit, which was conducted in January and February of 2008. Besides the spot review process, many enforcement negotiations are conducted with two or more enforcement officers providing a level of review as the process is being conducted. Finally, the Enforcement Supervisor will review documentation for completeness and approve all settlement offers.

Target Completion Date: 03/01/08

Benefits/Costs:

Recommendation D: Require an additional senior enforcement officer or supervisor to attend settlement negotiations and approve any penalty reductions agreed upon negotiations.

Response: Concur.

The Department has established a process where all enforcement settlement meetings now have two or more enforcement officers in attendance. Whether or not a senior enforcement officer or the enforcement supervisor is in attendance will be determined by the levity of the fine and nature of the negotiation. Review for inconsistencies in this process is outlined in response to Recommendation C.

Target Completion Date: 03/06/08

Benefits/Costs:

Issue: Timeliness of penalties

AQD Enforcement Division could improve timeliness for levying penalties. Decreasing the time it takes to levy penalties would also likely promote corrective change at permit sites. The Enforcement Division should consider using incentives to improve timeliness.

With respect to high priority violations, delays in enforcement actions could result in the Environmental Protection Agency taking over enforcement actions, significantly reducing AQD revenues. ADQ should ensure adequate resources are assigned to high priority violations.

Response: Do Not Concur.

The Enforcement Division negotiates penalties, it does not levy them. This is not merely a semantic distinction. We cannot routinely demand full calculation of penalty from alleged violators.

This is particularly true when cases are large and/or complex. The Enforcement Division relies on information that can often be supplied only by the alleged violator. Also, for some cases, several follow-up meetings between compliance and enforcement are

necessary. In these cases, the time needed to reach a mutually satisfactory settlement is increased beyond the control of the Enforcement Division.

Finally, many High Priority Violator (HPV) cases are simply too large in scope of violations and calculated penalty for a penalty "incentive" to result in a mail-out resolution.

Recommendation A: Evaluate the current case assignment process to ensure that appropriate and adequate resources are assigned to high priority violations as required by the EPA.

Response: Concur.

High Priority Violation referrals are color-coded in a red file and assigned as they arrive.

Target Completion Date: Done

Benefits/Costs:

Recommendation B: Conduct monthly and Day 150 conference calls with the EPA, or seek waiver to policy if not beneficial.

Response: Concur.

Enforcement is in frequent contact with Emissions Inventory with regard to HPV cases; Emissions Inventory is the conduit to EPA. While these schedules for conference calls are dictated by the EPA, they prefer to discuss these issues on an as needed basis rather than handling every case as a joint determination. EPA only holds conference calls or shares emails with others on more complex issues. The EPA has encouraged this level of contact and MCAQ will follow their direction. If Internal Audit requires a formal waiver from these responsibilities, MCAQ will oblige and request this waiver in writing from the EPA.

Target Completion Date: 6/30/08

Benefits/Costs:

Recommendation C: Update penalty policy to require violators to submit additional information in a timely manner.

Response: Concur.

Enforcement has amended the mail-out offer form to include a response date.

While the Enforcement Division has little authority to compel the submittal of information by a specific date, all attempts will be exhausted to gain the information and avoid legal action. Legal action related to information lapse offenses is a last resort as these actions are resource intensive.

Target Completion Date: 03/06/08

Benefits/Costs:

Recommendation D: Review results of previous discount program and consider reinstating it.

Response: Concur.

The Enforcement Division reinstated the discount program for NOV recipients to settle without contesting enforcement action.

Target Completion Date: 03/06/08

Benefits/Costs:

Approved By:




Department Head

5.28.08
Date



Assistant County Manager

5.28.08
Date



County Manager

5/29/08
Date